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11 Attorneys for Plaintiff Thomas E. Perez
 12 Secretary of Labor, United States Department of Labor

13 UNITED STATES DISTRICT COURT
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION
 16

17	THOMAS E. PEREZ,)	
18	Acting Secretary of the United States)	Civil Action No. C 12-2055 EMC
19	Department of Labor,)	SETTLEMENT AGREEMENT
20)	AND [PROPOSED] CONSENT
21	Plaintiff,)	ORDER AND JUDGMENT
22)	
23)	
24	DENNIS WEBB, MATHIEU FIDIAM,)	
25	J. ROBERT GALLUCCI, CONSULTING)	ERISA 29 U.S.C. § 1001, et seq.
26	FIDUCIARIES, INC., and THE PARROT)	
27	CELLULAR EMPLOYEE STOCK)	
28	OWNERSHIP PLAN,)	
	Defendants.)	

1 Plaintiff Thomas E. Perez, Secretary of the United States Department of Labor
 2 ("Secretary"), and Defendants Dennis Webb ("Webb"), Mathieu Fidiarn ("Fidiarn"), J.
 3 Robert Gallucci ("Gallucci"), Consulting Fiduciaries, Inc. ("CFI") and the Parrot Cellular
 4 Employee Stock Ownership Plan¹ (the "ESOP" or "Plan") (collectively, "Defendants"), by
 5 and through their respective attorneys, have negotiated an agreement to settle all civil
 6 claims and issues between them in the above-captioned action (the "Action") as set forth
 7 below. The Secretary and Defendants are hereinafter referred to collectively as the
 8 "Parties". The Parties each consent to the entry of this Consent Order and Judgment
 9 ("Order") by the United States District Court for the Northern District of California (the
 10 "Court") as the sole and complete memorialization of the terms of such agreement.

11 1. The Action was filed by the Secretary pursuant to the Secretary's authority under
 12 Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §
 13 1001, et seq., as amended.

14 2. The Secretary's Complaint alleges, among other things, that Defendants violated
 15 ERISA in connection with the ESOP's purchase of stock of Entrepreneurial Ventures, Inc.
 16 ("EVI") on November 21, 2002 for more than its fair market value.

17 3. The Defendants each filed Answers in which they deny liability.

18 4. The Parties admit that the Court has jurisdiction over the Parties to and the
 19 subject matter of this Action.

20 5. Defendants waive the notice of assessment of a penalty under ERISA § 502(l),
 21 29 U.S.C. § 1132(l), in connection with the settlement and waive the service requirement of
 22 29 C.F.R. § 2570.83.

23 6. Defendant CFI represents, and the Secretary has confirmed, that CFI was
 24 dissolved as of December 2011 and has no assets.

27 ¹ The Parrot Cellular Employee Stock Ownership Plan is named in the Secretary's complaint solely as
 28 a party necessary for complete relief.

1 7. The parties agree to waive findings of fact and conclusions of law by the Court
2 and agree to entry of this Consent Order and Judgment.

3 Accordingly, it is **ORDERED, ADJUDGED AND DECREED** that:

4 **I. JURISDICTION**

5 The Court has jurisdiction over the parties to this Order and subject matter of this
6 action and is empowered to provide the relief herein.

7 **II. MONETARY RELIEF**

8 A. Within thirty (30) days of entry of this Order, CFI will cause its insurer to pay
9 the sum of \$2,000,000 (two million dollars) to the ESOP. Payment of the penalty is waived
10 as to CFI pursuant to ERISA § 502(l)(3)(B), 29 U.S.C. § 1132(l)(3)(B).

11 B. Within twenty (20) days of entry of this Order, Webb, Fidiam and Gallucci will
12 cause their insurer to pay the sum of \$1,650,000 (one million six hundred-fifty thousand
13 dollars). The \$1.65 million shall be paid as follows: \$1,500,000 (one million five hundred
14 thousand dollars) shall be paid to the ESOP; and \$150,000 (one hundred fifty thousand
15 dollars) shall be paid as a penalty pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l).

16 C. Within twenty (20) days of entry of this Order, Webb shall personally pay the
17 sum of \$750,000 (seven hundred fifty thousand dollars). The \$750,000 shall be paid as
18 follows: \$681,818 (six hundred eighty -one thousand eight hundred eighteen dollars) shall
19 be paid to the ESOP; and \$68,182 (sixty-eight thousand one hundred eighty-two dollars)
20 shall be paid as a penalty pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l).

21 D. The payments described in Section II, Paragraphs B. and C. relating to the civil
22 penalty under ERISA § 502(l) shall be paid via regular mail to the following address:

23 U.S. Department of Labor
24 ERISA Civil Penalty
25 P.O. Box 71360
26 Philadelphia, PA 19176-1360

27 The check will be made payable to the United States Department of Labor and will
28 reference EBSA Case No. 70-013279(48). If Defendants wish to remit a check by express

1 courier, they agree to contact Soroosh Nikouei at the Department of Labor and follow his
2 instructions.

3 E. No Defendant and no insurer acting on behalf of any Defendant shall seek or
4 receive indemnification from EVI or from the ESOP for any payment required by Section II
5 of this Order.

6 F. If one or more of the Defendants do not make the payments required by section
7 II., paragraphs A. through C. of this Order: (a) the paying Defendants shall remain settled
8 and released in accordance with the terms of this Order; (b) all non-paying Defendants
9 waive any and all rights they may have against the paying Defendants for contribution and
10 indemnity; and (c) the Secretary may proceed in this Action against the non-paying
11 Defendant or Defendants as if those Defendant(s) and the Secretary had never executed this
12 document. In addition, the Secretary shall not seek contribution and indemnity for any
13 non-payments under this Order from the paying Defendant or Defendants who have
14 complied with the terms of this Order. If the Court does not enter this Order, this
15 Agreement will become void and the Parties may proceed with litigation of the Action as if
16 they had never executed this document.

17 III. RELEASES

18 A. The present Order and Judgment represents a full, final and complete judicial
19 resolution of all of the civil claims alleged in the Secretary's Complaint in this Action
20 against Defendants. The Secretary hereby expressly waives, releases and forever
21 discharges any and all actions, claims, and demands he has or may have against Defendants
22 that arise out of, or relate to, the transactions, events, acts or omissions and occurrences
23 alleged in the Secretary's Complaint, as well as any and all other actions, claims and
24 demands that he has or may have against Defendants arising out of, or in connection with,
25 any other proceedings or investigations arising out of the facts, claims, transactions, events
26 and/or allegations in the Action, through the date of execution of this Settlement
27 Agreement. After a settling Defendant makes the payments required under this Order and
28

1 provides sufficient proof of payment to the Secretary, all such actions, claims and demands
2 will be released, settled and dismissed with prejudice as to that Defendant. Released claims
3 include any and all legal or beneficial claims, rights, demands, obligations, actions,
4 controversies, debts, damages, losses, costs, expenses (including attorneys' fees and costs),
5 causes of action or liabilities of any kind or nature whatsoever in law or in equity, known or
6 unknown, asserted, unasserted, or which could have been asserted, against any of the
7 released persons, under federal or state law, arising out of the facts, claims, transactions,
8 events and/or allegations in the Action. Release of claims by the Secretary extend to
9 Defendants and all related entities, family members, employees, successors, benefits plans,
10 fiduciaries, heirs, assigns, trustees, insurers, attorneys and representatives.

11 B. Defendants and, as applicable, and all related entities, family members,
12 employees, successors, benefits plans, fiduciaries, heirs, assigns, trustees, insurers,
13 attorneys and representatives, assigns and successors in interest, do hereby release the
14 Secretary and his officers, agents, attorneys, employees, and representatives, both in their
15 individual and governmental capacities, from all actions, claims and demands of
16 whatsoever nature, including those arising under the Equal Access to Justice Act or any
17 statute, rule or regulation, that relate in any manner to the filing, prosecution, and
18 maintenance of this matter and any other proceeding or investigation incident thereto.

19 C. The Secretary and each Defendant shall each bear his or its own costs, expenses,
20 and attorneys' fees in connection with this Action.

21 D. Within forty-five (45) days of entry of this Order, each Defendant will provide,
22 or cause its insurer to provide, proof to the Secretary of the Defendant's payment to the
23 ESOP or any payment made on the Defendant's behalf to the ESOP. Such proof will
24 include wire transfer confirmations of the payments or such other proof as may be
25 reasonably requested by the Secretary. Any proof provided under this paragraph will be
26 sent to the Secretary's representative at the following address:
27
28

Jean Ackerman, Regional Director
San Francisco Regional Office
U.S. Department of Labor
Employee Benefits Security Administration
90 7th Street, Suite 11-300
San Francisco, CA 94103

The Secretary will notify each Defendant of his receipt of satisfactory proof, in writing, within ten (10) days of receipt thereof.

IV. RETENTION OF JURISDICTION

This Court shall retain jurisdiction over the parties and subject matter of this Action for the purpose of enforcing and/or interpreting the terms of this Order. The Parties agree that their agreement memorialized in this order will be governed by California law, to the extent it is not governed by ERISA.

V. PARTIES BOUND

By entering into this Order, the Parties hereto represent that they have been informed by Counsel of the effect and purpose of this Order and agree to be bound by its terms. This Order is not binding on, or enforceable by, any governmental agency other than the United States Department of Labor.

VI. SIGNATORIES

The Parties hereto expressly acknowledge and represent that they have read this Order and understand its provisions.

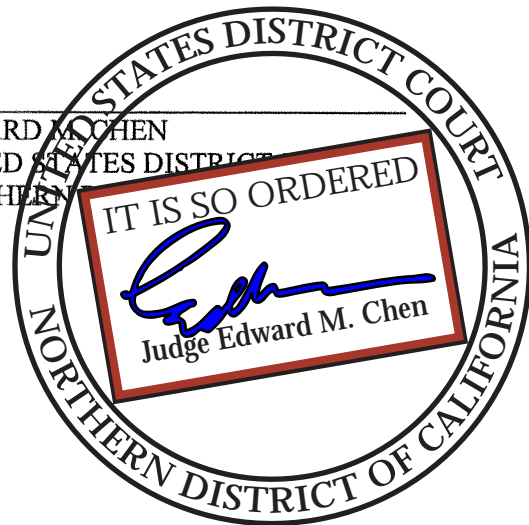
VII. MULTIPLE ORIGINALS

This Order may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

1 It is hereby **ORDERED** that once the payments required herein are made and
2 satisfactory proof of payment has been received by the Secretary, but no later than the
3 fifty-fifth (55th) day after entry of this Order, all of the claims stated by the Secretary in his
4 Complaint are dismissed with prejudice, Judgment will then be entered and this case shall
5 be closed.

6
7 ENTERED: 10/17/13
8 _____

9 EDWARD M. CHEN
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA



1 The undersigned hereby consent to the entry of this Order:

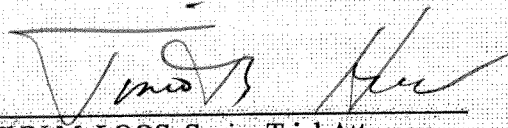
2 FOR THE SECRETARY:

3 Date: October 9, 2013

4 M. PATRICIA SMITH.
Solicitor of Labor

5 TIMOTHY D. HAUSER
6 Associate Solicitor

7 RISA D. SANDLER
8 Counsel for Fiduciary Litigation
9 Plan Benefits Security Division

10 
11 GLENN M. LOOS, Senior Trial Attorney
12 ERIC C. LUND, Trial Attorney
13 Office of the Solicitor
14 U.S. Department of Labor

15 FOR INDIVIDUAL DEFENDANTS:

16
17 Date: October 8, 2013

18 Donald P. Sullivan as atty for
CFI

19
20
21 Date: _____, 2013

DENNIS WEBB

22
23 Date: Sept. 23, 2013, 2013

24 
MATHIEU FIDIHAM

25
26
27 Date: _____, 2013

J. ROBERT GALLUCCI

Received Fax : Sep 26 2013 3:51PM Fax Station : TRUCKER HUSS

09/26/2013 15:53 4088668384

PARROT CORPORATE

PAGE 01/01

1 The undersigned hereby consent to the entry of this Order:


2 FOR THE SECRETARY:

3 Date: October 9, 2013

M. PATRICIA SMITH
Solicitor of Labor

TIMOTHY D. HAUSER
Associate Solicitor

RISA D. SANDLER
Counsel for Fiduciary Litigation
Plan Benefits Security Division

10 
11 GLENN M. LOOS, Senior Trial Attorney
12 ERIC C. LUND, Trial Attorney
13 Office of the Solicitor
14 U.S. Department of Labor

15 FOR INDIVIDUAL DEFENDANTS:

16 Date: _____, 2013

CFI

18 Date: Sept 26, 2013


DENNIS WEBB

20 Date: Sept. 23, 2013, 2013


MATHIEU FIDIEM

22 Date: _____, 2013

J. ROBERT GALLUCCI

24 Settlement Agreement and [Proposed] Consent Order and Judgment
25 Case No. C 12-2055 EMC

8

1 The undersigned hereby consent to the entry of this Order:

2 FOR THE SECRETARY:

3
4 Date: _____, 2013 M. PATRICIA SMITH
Solicitor of Labor

5
6 TIMOTHY D. HAUSER
Associate Solicitor

7
8 RISA D. SANDLER
Counsel for Fiduciary Litigation
Plan Benefits Security Division

9
10
11
12 _____
GLENN M. LOOS, Senior Trial Attorney
ERIC C. LUND, Trial Attorney
Office of the Solicitor
U.S. Department of Labor

13
14
15 FOR INDIVIDUAL DEFENDANTS:

16
17
18 Date: _____, 2013

CFI

19
20
21 Date: _____, 2013

DENNIS WEBB

22
23
24 Date: _____, 2013

MATHIEU FIDIAM

25
26
27 Date: Sept 25, 2013

J. Robert Gallucci
J. ROBERT GALLUCCI

1 Approved as to Form:

2 FOR DENNIS WEBB:

3
4
5 Date: September 26, 2013

R. Bradford Huss
6 R. BRADFORD HUSS
7 TRUCKER HUSS
8

9 FOR MATHIEU FIDIAM, J. ROBERT
10 GALLUCCI, and the PARROT CELLULAR
11 EMPLOYEE STOCK OWNERSHIP PLAN:

12
13 Date: September 25, 2013

James P. Baker
14 JAMES P. BAKER
15 BAKER & MCKENZIE LLP
16

17 FOR CONSULTING FIDUCIARIES INC.:

18
19
20 Date: October 8, 2013

Donald C. Robinson
21 RALPH ROBINSON
22 WILSON ELSE MOSKOWITZ
23 EDELMAN & DICKER LLP
24
25
26
27
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